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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,242	12/22/2003	Nathan P. Hendon	16124	6965

23556 7590 10/05/2005

KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,242

Applicant(s)

HENDON ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 12-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date 52104.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11, drawn to a composite material, classified in class 442, subclass 329.
 - II. Claims 12-25, drawn to a method of making a composite material, classified in class 156, subclass 437.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by hydroentangling a batt of fibers on top of a layer of elastomeric filaments such process will form the nonwoven with a bond pattern and provide for entanglement that will bond the nonwoven to the elastic layer.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Nathan Hendon on September 27, 2005 a provisional election was made without traverse to prosecute the invention of group I, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over KAUSCHKE et al. (WO 01/012427 A1) in view of WELCH et al. (WO 01/87589 A2).

KAUSCHKE et al. discloses a nonwoven having a non-symmetrical bonding configuration yielding low tensile strength and high percent elongation in a first direction and high tensile strength and low percent elongation in a second direction. (Page 1, lines 8-11) The reference teaches non-symmetrical bonding pattern configurations that result in a fabric with an expected or standard elongation in one direction, but increased elongation in the other direction. (Page 2, lines 1-3) The bonding points 20 are preferably either substantially circular or substantially oval, although other shapes may be used. The disposition of the bonding points 22 closer to each other in the MD 14 than in the CD 12 has the effect of increasing the tensile strength and decreasing the percentage elongation in the MD 14, relative to the tensile and

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elongation in the CD 12. (Page 6, lines 9-20; Page 7, lines 9-20) The reference teaches square or polygonal (rectangular, hexagonal, etc.) bonding points instead of oval or circular ones. (Page 9, lines 28-29) The reference teaches using a calendaring process or an ultrasonic process to provide the bonding pattern. (Page 14, lines 15-21) The reference further teaches composites or laminates 140 provided from nonwoven fabrics 10 of their invention and an elastic film 142. (Page 14, lines 22-24) Although KAUSCHKE et al. does not explicitly teach the claimed bond pattern dimension ratio it is reasonable to presume that this property is inherent to the nonwoven of the KAUSCHKE et al. reference. Support for said presumption is found in the use of like materials (i.e. nonwoven material with non-uniform bond patterns). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a nonwoven bond pattern dimension ratio greater than 1 would obviously have been present one the KAUSCHKE et al. nonwoven product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

While KAUSCHKE teaches laminates with a nonwoven layer that equates to that of the present invention and teaches the construction of composites or laminates that further include an elastic material, the reference fails to teach the use of parallel elastomeric filaments as the elastic material.

WELCH et al. is directed to a laminated article having elastic strands or filaments contained therein for providing elasticity to the article. (Abstract) The laminated article comprises a facing layer, a plurality of elastic filaments and an adhesive component. With regards to the elastic filaments being parallel, it is noted that the reference teaches using parallel

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elastic filaments that are further depicted in the drawings as strands 30 in a parallel configuration. (Refer Page 6, lines 3-4; claim 1 and Figures)

Since both references are directed to elastic composites used in similar applications such as diaper products with a degree of elasticity, the purpose disclosed by WELCH et al. would have been recognized in the pertinent art of KAUSCHKE.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the composite of WELCH et al. and provide with elastic filaments/strands with the motivation of providing elasticity in a specific direction while allowing for a flexible material.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

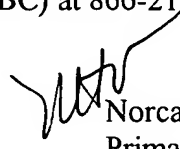
TAYLOR et al. (US 4,692,368) – refer to Figures.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Norca L. Torres-Velazquez
Primary Examiner
Art Unit 1771

September 28, 2005